

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

## **FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to Special Order 3-251, this habeas case has been automatically referred for findings, conclusions, and recommendation. Before the Court is the movant's *Motion for Summary Judgment*, received April 7, 2014 (doc. 10). The movant seeks summary judgment in this case because the respondent did not timely file a response to his *Motion to Vacate, Set Aside, or Correct Sentence* under 28 U.S.C. § 2255, as order.

Rule 5 of the Rules Governing Section 2255 Proceedings for the United States District Courts [Section 2255 Rules] states that if ordered to do so by the Court, the respondent must file an answer to the § 2255 motion that addresses the allegations in the motion. *See* Section 2255 Rule 5(a), (b). Here, although the Court ordered the respondent to file an answer to the § 2255 motion within sixty days by order filed on January 8, 2014 (*see* doc. 9), the Clerk’s Office inadvertently failed to serve the order on the respondent.<sup>1</sup> Because the respondent was not served with that order, it has not had an opportunity to respond to the § 2255 motion. In addition, courts may not grant summary judgment by default simply because a party fails to respond to a motion for summary judgment. *See Hibernia Nat'l Bank v. Admin. Cent. Sociedad Anonima*, 776 F.2d 1277, 1279 (5th

<sup>1</sup> A second order directing the respondent to file an answer to the § 2255 motion was issued on April 8, 2014 (doc. 11), and it has now been properly served.

Cir.1985). Summary judgment in favor of the movant is therefore not warranted solely on grounds that the respondent did not file an answer.

The *Motion for Summary Judgment* should be **DENIED**.

**SIGNED this 9th day of April, 2014.**



IRMA CARRILLO RAMIREZ  
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND  
NOTICE OF RIGHT TO APPEAL/OBJECT**

The United States District Clerk shall serve a copy of these findings, conclusions, and recommendation on all parties by mailing a copy to each of them. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to these findings, conclusions and recommendation must file and serve written objections within fourteen days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. Failure to file written objections to the proposed findings, conclusions, and recommendation within fourteen days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (*en banc*).



IRMA CARRILLO RAMIREZ  
UNITED STATES MAGISTRATE JUDGE